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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	78519618
Applicant	Microvision Optical, Inc.
Applied for Mark	FRAMELOCK
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

In re Application of:
Microvision Optical, Inc.
Serial No.: 78/519618
Filed: November 18, 2004
Trademark: **FRAMELOCK**

Law Office 116

Trademark Attorney:
William Breckenfeld

REPLY BRIEF FOR APPELLANT

INTRODUCTION

Applicant (hereinafter "Appellant") hereby submits this Reply Brief as part of its appeal from Examiner's final refusal to register the above-identified trademark, dated June 30, 2005, and respectfully requests that the Trademark Trial and Appeal Board reverse Examiner's decision rejecting the subject mark as being confusingly similar to U.S. Registration No. 2,222,472 for FRAMELOC in International Class 006 for "fasteners, namely, metal screws."

APPELLANT'S TRADEMARK

Appellant seeks registration on the Principal Register of its mark FRAMELOCK in International Class 009 for "eyeglass frames and fasteners."

ARGUMENT

This communication is responsive to the Examining Attorney's Appeal Brief dated November 17, 2006. Appellant continues to rely on the arguments as made in its Appeal Brief and respectfully submits the following Reply Brief offering additional arguments in support of the mark's registration.

I. BACKGROUND

Appellant, Microvision Optical, Inc., is a company whose mission is to provide new and innovative solutions for vision correction. In furtherance of this goal, Appellant

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employs a team of creative-thinking technical engineers to invent and design eyeglasses and eyeglass related products to satisfy general consumer optical correction needs that are not being adequately addressed by existing products. Appellant currently owns several federal registrations including TAPER LOK (Reg. No. 2,415,506), NEOX (Reg. No. 3,082,119), and MICROVISION OPTICAL (Reg. No. 2,672,151) among many others.

II. NO LIKELIHOOD OF CONFUSION

Examiner has refused registration of Appellant's mark FRAMELOCK based upon perceived likelihood of confusion with U.S. Registration No. 2,222,472 for the mark FRAMELOC in International Class 006 for "fasteners, namely, metal screws." Appellant respectfully submits that there is no likelihood of confusion between these marks as the likelihood of confusion requires that the confusion be probable and not simply possible. See HMH Publishing Co. v. Brincat, 183 U.S.P.Q. 141, 144 (9th Cir. 1974); Fleischmann Distilling Corp. v. Maier Brewing Co., 136 U.S.P.Q. 508, 518 (9th Cir.), cert. denied, 374 U.S. 380, 37 U.S.P.Q. 913 (1963); J.B. Williams Co. v. Le Conte Cosmetics, Inc., 186 U.S.P.Q. 317 319 (9th Cir. 1975). Additionally, "[t]he test for likelihood of confusion is whether a 'reasonably prudent consumer' in the marketplace is likely to be confused as to the origin of the goods or services bearing one of the marks." Dreamwerks Production Group, Inc. v. SKG Studio, 142 F.3d 1127, 1129 (9th Cir. 1998).

Appellant repeats its assertion that its mark is not confusingly similar to the prior Registrant's mark and continues to rely on the arguments as presented in its Appeal Brief, dated September 12, 2006. However, Appellant avails itself of this Reply Brief in order to reinforce the dissimilarities in the goods at issue; namely, that Appellant goods are in the nature of a specific apparatus used to connect and lock eyeglass frames only in

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International Class 009, while Registrant's goods are in the nature of general metal screws registered in International Class 006.

A. Marks Are Used in Conjunction with Dissimilar Goods

Examiner contends that Appellant's eyeglass frames and fasteners "overlap" the cited registration's metal screws since "most eyeglass frame fasteners are metal screws." As such, Examiner believes the alleged overlapping goods are likely to confuse consumers into thinking the goods come from the same source. Appellant respectfully disagrees and submits that the goods in question are so dissimilar as to avoid any potential for consumer confusion.

Relying on the law as cited in its Appeal Brief, Appellant submits that the goods at issue are dissimilar in that Registrant's goods of "fasteners, namely, metal screws" are registered in International Class 006 (metal goods), while Appellant's goods of "eyeglass frames and fasteners" are registered in International Class 009 (electrical and scientific apparatus). Additionally, the fact that Appellant's goods are specifically suited for "eyeglass frames" is shown in the punctuation of the description itself; namely, that there is no comma or semicolon separating the goods description. This fact lends toward the interpretation that the goods being described are not just any "fasteners," but rather are specifically "eyeglass fasteners." Despite Examiner's arguments, the fact that both descriptions contain the word "fasteners" is not suggestive of potential confusion at all. The broad term "fasteners" can be applied in a myriad of different uses, markets, goods, and commercial contexts. Here, Appellant is expressly limiting its goods to a specific, unique type of eyeglass fastener.

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Moreover, the fact that Appellant's goods are registered in different classes reinforces the fact that the goods being produced are fundamentally different from Registrant's goods, i.e., "eyeglass fasteners" as opposed to essentially common "metal screws." Consumers are extremely unlikely to confuse Registrant's construction grade hardware and screws with Appellant's unique and specific eyeglass fastener apparatus. The goods are not only dissimilar; they are used in a much different context, with different purchasers, different applications, and different general uses. Contrary to Examiner's statement, the goods at issue do not "overlap" in any way. Therefore, Appellant's goods are sufficiently dissimilar from Registrant's goods as to avoid any consumer confusion.

III. CONCLUSION

Appellant respectfully submits that there is no likelihood of consumer confusion between its mark and the cited registration. Appellant's continues to rely on its arguments as presented in its Appeal Brief and reinforces its contention that the marks are used in conjunction with sufficiently dissimilar goods. Accordingly, Appellant respectfully submits that this application is in condition for publication and favorable action is requested.

Respectfully submitted,

GREENBERG TRAURIG

Dated: _____

By: _____

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